

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Apr 14, 2021

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JEFFREY R.,¹

Plaintiff,

vs.

ANDREW M. SAUL,
COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

No. 2:20-cv-00228-MKD

ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

ECF Nos. 18, 20

Before the Court are the parties' cross-motions for summary judgment. ECF Nos. 18, 20. The parties consented to proceed before a magistrate judge. ECF No. 6. The Court, having reviewed the administrative record and the parties' briefing,

¹ To protect the privacy of plaintiffs in social security cases, the undersigned identifies them by only their first names and the initial of their last names. *See* LCivR 5.2(c).

1 is fully informed. For the reasons discussed below, the Court denies Plaintiff's
2 motion, ECF No. 18, and grants Defendant's motion, ECF No. 20.

3 JURISDICTION

4 The Court has jurisdiction over this case pursuant to 42 U.S.C. § 405(g).

5 STANDARD OF REVIEW

6 A district court's review of a final decision of the Commissioner of Social
7 Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is
8 limited; the Commissioner's decision will be disturbed "only if it is not supported
9 by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153,
10 1158 (9th Cir. 2012). "Substantial evidence" means "relevant evidence that a
11 reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159
12 (quotation and citation omitted). Stated differently, substantial evidence equates to
13 "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and
14 citation omitted). In determining whether the standard has been satisfied, a
15 reviewing court must consider the entire record as a whole rather than searching
16 for supporting evidence in isolation. *Id.*

17 In reviewing a denial of benefits, a district court may not substitute its
18 judgment for that of the Commissioner. *Edlund v. Massanari*, 253 F.3d 1152,
19 1156 (9th Cir. 2001). If the evidence in the record "is susceptible to more than one
20 rational interpretation, [the court] must uphold the ALJ's findings if they are

1 supported by inferences reasonably drawn from the record.” *Molina v. Astrue*, 674
2 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court “may not reverse an
3 ALJ’s decision on account of an error that is harmless.” *Id.* An error is harmless
4 “where it is inconsequential to the [ALJ’s] ultimate nondisability determination.”
5 *Id.* at 1115 (quotation and citation omitted). The party appealing the ALJ’s
6 decision generally bears the burden of establishing that it was harmed. *Shinseki v.*
7 *Sanders*, 556 U.S. 396, 409-10 (2009).

8 **FIVE-STEP EVALUATION PROCESS**

9 A claimant must satisfy two conditions to be considered “disabled” within
10 the meaning of the Social Security Act. First, the claimant must be “unable to
11 engage in any substantial gainful activity by reason of any medically determinable
12 physical or mental impairment which can be expected to result in death or which
13 has lasted or can be expected to last for a continuous period of not less than twelve
14 months.” 42 U.S.C. § 423(d)(1)(A). Second, the claimant’s impairment must be
15 “of such severity that he is not only unable to do his previous work[,] but cannot,
16 considering his age, education, and work experience, engage in any other kind of
17 substantial gainful work which exists in the national economy.” 42 U.S.C. §
18 423(d)(2)(A).

19 The Commissioner has established a five-step sequential analysis to
20 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §

1 404.1520(a)(4)(i)-(v). At step one, the Commissioner considers the claimant's
2 work activity. 20 C.F.R. § 404.1520(a)(4)(i). If the claimant is engaged in
3 "substantial gainful activity," the Commissioner must find that the claimant is not
4 disabled. 20 C.F.R. § 404.1520(b).

5 If the claimant is not engaged in substantial gainful activity, the analysis
6 proceeds to step two. At this step, the Commissioner considers the severity of the
7 claimant's impairment. 20 C.F.R. § 404.1520(a)(4)(ii). If the claimant suffers
8 from "any impairment or combination of impairments which significantly limits
9 [his or her] physical or mental ability to do basic work activities," the analysis
10 proceeds to step three. 20 C.F.R. § 404.1520(c). If the claimant's impairment
11 does not satisfy this severity threshold, however, the Commissioner must find that
12 the claimant is not disabled. *Id.*

13 At step three, the Commissioner compares the claimant's impairment to
14 severe impairments recognized by the Commissioner to be so severe as to preclude
15 a person from engaging in substantial gainful activity. 20 C.F.R. §
16 404.1520(a)(4)(iii). If the impairment is as severe or more severe than one of the
17 enumerated impairments, the Commissioner must find the claimant disabled and
18 award benefits. 20 C.F.R. § 404.1520(d).

19 If the severity of the claimant's impairment does not meet or exceed the
20 severity of the enumerated impairments, the Commissioner must pause to assess

1 the claimant's "residual functional capacity." Residual functional capacity (RFC),
2 defined generally as the claimant's ability to perform physical and mental work
3 activities on a sustained basis despite his or her limitations, 20 C.F.R. §
4 404.1545(a)(1), is relevant to both the fourth and fifth steps of the analysis.

5 At step four, the Commissioner considers whether, in view of the claimant's
6 RFC, the claimant is capable of performing work that he or she has performed in
7 the past (past relevant work). 20 C.F.R. § 404.1520(a)(4)(iv). If the claimant is
8 capable of performing past relevant work, the Commissioner must find that the
9 claimant is not disabled. 20 C.F.R. § 404.1520(f). If the claimant is incapable of
10 performing such work, the analysis proceeds to step five.

11 At step five, the Commissioner considers whether, in view of the claimant's
12 RFC, the claimant is capable of performing other work in the national economy.
13 20 C.F.R. § 404.1520(a)(4)(v). In making this determination, the Commissioner
14 must also consider vocational factors such as the claimant's age, education, and
15 past work experience. *Id.* If the claimant is capable of adjusting to other work, the
16 Commissioner must find that the claimant is not disabled. 20 C.F.R. §
17 404.1520(g)(1). If the claimant is not capable of adjusting to other work, analysis
18 concludes with a finding that the claimant is disabled and is therefore entitled to
19 benefits. *Id.*

1 The claimant bears the burden of proof at steps one through four above.
2 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to
3 step five, the burden shifts to the Commissioner to establish that 1) the claimant is
4 capable of performing other work; and 2) such work “exists in significant numbers
5 in the national economy.” 20 C.F.R. § 404.1560(c)(2); *Beltran v. Astrue*, 700 F.3d
6 386, 389 (9th Cir. 2012).

7 **ALJ’S FINDINGS**

8 On October 25, 2016, Plaintiff applied for Title II disability insurance
9 benefits alleging a disability onset date of October 1, 2015. Tr. 15, 69, 150-51.
10 The application was denied initially and on reconsideration. Tr. 94-96, 98-100.
11 Plaintiff appeared before an administrative law judge (ALJ) on August 3, 2018.
12 Tr. 28-68. On November 23, 2018, the ALJ denied Plaintiff’s claim. Tr. 12-27.

13 At step one of the sequential evaluation process, the ALJ found Plaintiff,
14 who met the insured status requirements through December 31, 2020, has not
15 engaged in substantial gainful activity since October 1, 2015. Tr. 17. At step two,
16 the ALJ found that Plaintiff has the following severe impairments: major
17 depressive disorder, obstructive sleep apnea with use of CPAP machine,
18 generalized anxiety disorder, PTSD, panic disorder, and drug and alcohol addiction
19 disorder. *Id.*

1 At step three, the ALJ found Plaintiff does not have an impairment or
2 combination of impairments that meets or medically equals the severity of a listed
3 impairment. Tr. 18. The ALJ then concluded that Plaintiff has the RFC to perform
4 a full range of work at all exertional levels but with the following non-exertional
5 limitations:

6 [Plaintiff] can perform simple repetitive tasks with short, simple
7 instructions. He can have superficial interaction with co-workers and
8 small groups of familiar individuals. He can have superficial contact
9 with the general public, who can be around his vicinity, but this
10 individual can have no interaction with the general public for
11 performing job tasks. He needs a stable, routine job environment. He
12 can do no work at [a] fast production rate. H[e] is off-task up to 10%
13 of the workday.

14 Tr. 19.

15 At step four, the ALJ found Plaintiff is capable of performing his past
16 relevant work as a garbage collector and auto detailer. Tr. 23. The ALJ did not
17 make an alternative step five finding. Therefore, the ALJ concluded Plaintiff was
18 not under a disability, as defined in the Social Security Act, from the alleged onset
19 date of October 1, 2016, through the date of the decision. *Id.*

20 On April 22, 2020, the Appeals Council denied review of the ALJ's
decision, Tr. 1-6, making the ALJ's decision the Commissioner's final decision for
purposes of judicial review. *See* 42 U.S.C. § 1383(c)(3).

ISSUES

Plaintiff seeks judicial review of the Commissioner's final decision denying him disability insurance benefits under Title II of the Social Security Act. Plaintiff raises the following issues for review:

1. Whether the ALJ properly evaluated the medical opinion evidence;
2. Whether the ALJ properly evaluated the lay opinion evidence;²
3. Whether the ALJ properly evaluated Plaintiff's symptom claims;
4. Whether the ALJ conducted a proper step-five analysis; and
5. Whether the ALJ conducted a proper step-three analysis.

ECF No. 18 at 4.

DISCUSSION

A. Medical Opinion Evidence

Plaintiff contends the ALJ erred in his consideration of the opinion of R.A. Cline, Ph.D. ECF No. 18 at 6-13.

² Plaintiff did not list the ALJ's rejection of the lay opinion evidence as a separate issue, but briefed the issue, ECF No. 18 at 10-11, and Defendant responded regarding the issue, ECF No. 20 at 10-11. Thus, the Court finds the issue sufficiently raised for the Court's consideration.

1 Plaintiff generally asserts that the ALJ repeatedly erred in his evaluation of
2 the medical evidence, but does not set forth a specific argument regarding any
3 medical opinions except Dr. Cline's opinion. *Id.* at 6-13. Because Plaintiff failed
4 to develop the arguments regarding other medical opinions with any specificity,
5 the arguments are waived. *See Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d
6 1155, 1161 n.2 (9th Cir. 2008) (determining Court may decline to address on the
7 merits issues not argued with specificity); *Kim v. Kang*, 154 F.3d 996, 1000 (9th
8 Cir. 1998) (the Court may not consider on appeal issues not "specifically and
9 distinctly argued" in the party's opening brief).

10 There are three types of physicians: "(1) those who treat the claimant
11 (treating physicians); (2) those who examine but do not treat the claimant
12 (examining physicians); and (3) those who neither examine nor treat the claimant
13 [but who review the claimant's file] (nonexamining [or reviewing] physicians)." *Holohan v. Massanari*, 246 F.3d 1195, 1201-02 (9th Cir. 2001) (citations omitted).
14 Generally, a treating physician's opinion carries more weight than an examining
15 physician's, and an examining physician's opinion carries more weight than a
16 reviewing physician's. *Id.* at 1202. "In addition, the regulations give more weight
17 to opinions that are explained than to those that are not, and to the opinions of
18 specialists concerning matters relating to their specialty over that of
19 nonspecialists." *Id.* (citations omitted).
20

1 If a treating or examining physician's opinion is uncontradicted, the ALJ
2 may reject it only by offering "clear and convincing reasons that are supported by
3 substantial evidence." *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005).
4 "However, the ALJ need not accept the opinion of any physician, including a
5 treating physician, if that opinion is brief, conclusory and inadequately supported
6 by clinical findings." *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228
7 (9th Cir. 2009) (internal quotation marks and brackets omitted). "If a treating or
8 examining doctor's opinion is contradicted by another doctor's opinion, an ALJ
9 may only reject it by providing specific and legitimate reasons that are supported
10 by substantial evidence." *Bayliss*, 427 F.3d at 1216 (citing *Lester v. Chater*, 81
11 F.3d 821, 830-31 (9th Cir. 1995)). The opinion of a nonexamining physician may
12 serve as substantial evidence if it is supported by other independent evidence in the
13 record. *Andrews v. Shalala*, 53 F.3d 1035, 1041 (9th Cir. 1995).

14 On March 16, 2017, Dr. Cline examined Plaintiff and provided an opinion
15 on Plaintiff's psychological functioning. Tr. 351-56. Dr. Cline diagnosed Plaintiff
16 with borderline personality disorder, PTSD, panic disorder, agoraphobia,
17 unspecified depressive disorder (rule out alcohol use related), and severe alcohol
18 use disorder in early reported remission. Tr. 353. Dr. Cline opined Plaintiff's
19 anxiety/panic, mood instability/depressed mood, and trauma-related symptoms are
20 all marked in severity, and his maladaptive personality traits are moderate in

1 severity. *Id.* Dr. Cline opined Plaintiff has no to mild limitations in his ability to
2 understand, remember, and persist in tasks by following very short and simple
3 instructions, learn new tasks, perform routine tasks without special supervision, be
4 aware of normal hazards and take appropriate precautions, and ask simple
5 questions or request assistance; moderate limitations in his ability to understand,
6 remember, and persist in tasks by following detailed instructions, perform
7 activities within a schedule, maintain regular attendance, and be punctual within
8 customary tolerances without special supervision, adapt to changes in a routine
9 work setting, make simple work-related decisions, and set realistic goals and plan
10 independently; and marked limitations in his ability to communicate and perform
11 effectively in a work setting, maintaining appropriate behavior in a work setting,
12 and complete a normal workday/workweek without interruptions from
13 psychologically based symptoms. Tr. 354. Dr. Cline further opined Plaintiff's
14 mental impairments overall have a moderate severity rating, and his limitations
15 were expected to last six to 12 months. *Id.* Dr. Cline noted, "[t]he interplay
16 between his alcohol abuse and depression remains somewhat unclear," and as such
17 she did not know if Plaintiff's impairments would persist following 60 days of
18 sobriety. *Id.* The ALJ gave Dr. Cline's opinion little weight. Tr. 22. As Dr.
19 Cline's opinion was contradicted by the opinion of Dr. Forsyth, Tr. 89-90, the ALJ
20

1 was required to give specific and legitimate reasons, supposed by substantial
2 evidence, to reject Dr. Cline's opinion. *See Bayliss*, 427 F.3d at 1216.

3 First, the ALJ found Dr. Cline did not acknowledge Plaintiff's history of
4 substance use. Tr. 21-22. An ALJ may properly reject a medical opinion that is
5 rendered without knowledge of a claimant's substance abuse. *Cothrell v.*
6 *Berryhill*, 742 F. App'x 232, 236 (9th Cir. July 18, 2018) (unpublished opinion);
7 *Chavez v. Colvin*, No. 3:14-cv-01178-JE, 2016 WL 8731796, at *8 (D. Or. July 25,
8 2016) (unpublished opinion). The ALJ noted Dr. Cline did not mention Plaintiff's
9 history of polysubstance abuse, nor Plaintiff's potential continued marijuana use.
10 Tr. 21-22. While Dr. Cline diagnosed Plaintiff with alcohol use disorder, she did
11 not diagnose any other substance use disorder despite Plaintiff having used
12 marijuana more recently than alcohol, and his reported history of use of multiple
13 other substances, Tr. 352-53. Dr. Cline noted Plaintiff has a history of alcohol,
14 marijuana, mushroom, opiate medication, and methamphetamine use, including
15 marijuana use one month prior to the examination, and alcohol use four months
16 prior to the examination. Tr. 352. Plaintiff reported his longest period of sobriety
17 was when he maintained a year-long period following treatment. *Id.* Dr. Cline
18 noted it was difficult to clearly diagnose major depressive disorder due to
19 Plaintiff's recent heavy alcohol use, Tr. 353, and stated the interplay between
20 Plaintiff's alcohol use and depression was unclear, Tr. 354. Dr. Cline did not

1 address if Plaintiff's history of substance use, nor his recent marijuana use,
2 impacted her opinion. Plaintiff observed Dr. Cline did not comment on Plaintiff's
3 drug or alcohol use related to his PTSD, panic disorder or agoraphobia. ECF No.
4 18 at 12. This was a specific and legitimate reason, supported by substantial
5 evidence, to reject Dr. Cline's opinion.

6 Second, the ALJ found Dr. Cline's opinion indicated the limitations would
7 not be permanent with treatment. Tr. 22. Temporary limitations are not enough to
8 meet the durational requirement for a finding of disability. 20 C.F.R. §
9 404.1505(a); 42 U.S.C. § 423(d)(1)(A) (same); *Carmickle*, 533 F.3d at 1165
10 (affirming the ALJ's finding that treating physicians' short-term excuse from work
11 was not indicative of "claimant's long-term functioning"). To be disabled, an
12 impairment must be expected to last for a continuous period of at least 12 months.
13 See 20 C.F.R. § 404.1509. Here, Dr. Cline opined that with available treatment,
14 Plaintiff would be impaired for six to 12 months. Tr. 354. However, Dr. Cline
15 also noted Plaintiff's impairments may not persist following 60 days of sobriety, as
16 the interplay between his alcohol use and depression was somewhat unclear. Tr.
17 354. Any error in finding Dr. Cline's opinion did not meet the duration
18 requirement is harmless because the ALJ provided other specific and legitimate
19 reasons, supported by substantial evidence, to discount Dr. Cline's opinion. See
20 *Molina*, 674 F.3d at 1115.

1 Lastly, the ALJ found Dr. Cline's opinion was inconsistent with Plaintiff's
2 improvement with treatment. Tr. 22. An ALJ may discredit physicians' opinions
3 that are unsupported by the record as a whole. *Batson v. Comm'r of Soc. Sec.*
4 *Admin.*, 359 F.3d 1190, 1195 (9th Cir. 2004). After Dr. Cline rendered her opinion
5 in March 2017, Plaintiff had ongoing mental health treatment. Tr. 22 (citing Tr.
6 583-624). The ALJ observed that in April 2017, Plaintiff reported having two
7 good friends, riding motorcycles, fishing, and camping. Tr. 20 (citing Tr. 584).
8 Plaintiff's April 2017 mental status examination contained some abnormalities,
9 including distractible attention and poor recent memory, but Plaintiff otherwise had
10 a normal examination. Tr. 583. In July 2017, Plaintiff reported going camping,
11 and was observed as oriented, with a euthymic mood, intact functional status,
12 appropriate affect, and he was interactive. Tr. 599. In November 2017, Dr. Greer
13 noted Plaintiff appeared to be doing well, and his anxiety was under better control
14 with new medications, although he was still having occasional panic attacks. Tr.
15 20 (citing Tr. 607). In May 2018, Plaintiff had a fairly stable week with his mood
16 and anxiety, he reported sleeping well and reported his son keeps him busy during
17 the day and evening, and he reported he cares for his son during the day because
18 his fiancée is gone long hours; he was observed as alert, oriented, with normal
19 functional status. Tr. 621. This was a specific and legitimate reason, supported by
20 substantial evidence, to reject Dr. Cline's opinion.

B. Lay Opinion Evidence

Plaintiff contends the ALJ erred in his consideration of Ms. Wright's statement. ECF No. 18 at 10-11. An ALJ must consider the statement of lay witnesses in determining whether a claimant is disabled. *Stout v. Comm'r of Soc. Sec. Admin.*, 454 F.3d 1050, 1053 (9th Cir. 2006). Lay witness evidence cannot establish the existence of medically determinable impairments, but lay witness evidence is "competent evidence" as to "how an impairment affects [a claimant's] ability to work." *Id.*; 20 C.F.R. § 404.1513; *see also Dodrill v. Shalala*, 12 F.3d 915, 918-19 (9th Cir. 1993) ("[F]riends and family members in a position to observe a claimant's symptoms and daily activities are competent to testify as to her condition."). If a lay witness statement is rejected, the ALJ "must give reasons that are germane to each witness." *Nguyen v. Chater*, 100 F.3d 1462, 1467 (9th Cir. 1996) (citing *Dodrill*, 12 F.3d at 919).

On October 31, 2016, Ms. Wright completed a questionnaire regarding Plaintiff's functioning. Tr. 174-81. Ms. Wright stated Plaintiff's anxiety at times prevents him from leaving the house, he has been hospitalized multiple times for panic attacks, he helps care for their son and dogs though Ms. Wright handles most of the care, his symptoms vary between "good days" and "bad days," and on bad days he will not change his clothes, bathe, care for his hair, or shave, and he requires reminders to perform personal care, he can prepare several meals per week

1 with encouragement, he can drive and go out alone, he can handle money, he
2 works on cars and goes hiking only when he is feeling good, he works on cars with
3 a friend a couple times per week and visits his stepdad a few times per month, he
4 does not have issues getting along with others, but he has trouble with his memory,
5 concentration, completing tasks, following instructions, and handling stress. *Id.*
6 The ALJ gave Ms. Wright's opinion little weight. Tr. 23. As Ms. Wright is a lay
7 witness, the ALJ was required to give germane reasons to reject the statement. *See*
8 *Nguyen*, 100 F.3d at 1467.

9 The ALJ found Ms. Wright's opinion was inconsistent with her own report
10 of Plaintiff's activities of daily living. Tr. 22-23. Inconsistency with a claimant's
11 daily activities is a germane reason to reject lay testimony. *Carmickle*, 533 F.3d at
12 1163-64; *Lewis v. Apfel*, 236 F.3d 503, 512 (9th Cir. 2001). The ALJ noted that
13 while Ms. Wright reported Plaintiff had severe limitations, she also reported
14 Plaintiff was able to leave the home daily by driving or riding in a car, and was
15 able to shop. Tr. 22-23. The ALJ discussed Plaintiff's other activities earlier in
16 the decision, and noted Plaintiff engaged in camping, boating, fishing, riding
17 motorcycles, spending time with two friends, and maintaining a romantic
18 relationship. Tr. 20-21. Plaintiff alleges the record does not indicate how
19 frequently he engages in the activities. ECF No. 18 at 9. However, Ms. Wright
20 indicated Plaintiff engaged in social activities multiple times per week, leaves his

1 home almost every day, shops a few times per month, and prepares meals several
2 times per week. Tr. 175-78. While Ms. Wright indicated Plaintiff has “good days”
3 and “bad days,” Plaintiff’s ability to engage in multiple activities outside of his
4 home on a regular basis is inconsistent with her reports of Plaintiff’s disabling
5 limitations and inability to consistently leave his home. This was a germane
6 reason to reject Ms. Wright’s statements. Plaintiff is not entitled to remand on
7 these grounds.

8 **C. Plaintiff’s Symptom Claims**

9 Plaintiff faults the ALJ for failing to rely on reasons that were clear and
10 convincing in discrediting his symptom claims. ECF No. 18 at 13-14. An ALJ
11 engages in a two-step analysis to determine whether to discount a claimant’s
12 testimony regarding subjective symptoms. SSR 16–3p, 2016 WL 1119029, at *2.
13 “First, the ALJ must determine whether there is objective medical evidence of an
14 underlying impairment which could reasonably be expected to produce the pain or
15 other symptoms alleged.” *Molina*, 674 F.3d at 1112 (quotation marks omitted).
16 “The claimant is not required to show that [the claimant’s] impairment could
17 reasonably be expected to cause the severity of the symptom [the claimant] has
18 alleged; [the claimant] need only show that it could reasonably have caused some
19 degree of the symptom.” *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009).

1 Second, “[i]f the claimant meets the first test and there is no evidence of
2 malingering, the ALJ can only reject the claimant’s testimony about the severity of
3 the symptoms if [the ALJ] gives ‘specific, clear and convincing reasons’ for the
4 rejection.” *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (citations
5 omitted). General findings are insufficient; rather, the ALJ must identify what
6 symptom claims are being discounted and what evidence undermines these claims.
7 *Id.* (quoting *Lester*, 81 F.3d at 834; *Thomas v. Barnhart*, 278 F.3d 947, 958 (9th
8 Cir. 2002) (requiring the ALJ to sufficiently explain why it discounted claimant’s
9 symptom claims)). “The clear and convincing [evidence] standard is the most
10 demanding required in Social Security cases.” *Garrison v. Colvin*, 759 F.3d 995,
11 1015 (9th Cir. 2014) (quoting *Moore v. Comm’r of Soc. Sec. Admin.*, 278 F.3d 920,
12 924 (9th Cir. 2002)).

13 Factors to be considered in evaluating the intensity, persistence, and limiting
14 effects of a claimant’s symptoms include: 1) daily activities; 2) the location,
15 duration, frequency, and intensity of pain or other symptoms; 3) factors that
16 precipitate and aggravate the symptoms; 4) the type, dosage, effectiveness, and
17 side effects of any medication an individual takes or has taken to alleviate pain or
18 other symptoms; 5) treatment, other than medication, an individual receives or has
19 received for relief of pain or other symptoms; 6) any measures other than treatment
20 an individual uses or has used to relieve pain or other symptoms; and 7) any other

1 factors concerning an individual's functional limitations and restrictions due to
2 pain or other symptoms. SSR 16-3p, 2016 WL 1119029, at *7; 20 C.F.R. §
3 404.1529(c). The ALJ is instructed to "consider all of the evidence in an
4 individual's record," to "determine how symptoms limit ability to perform work-
5 related activities." SSR 16-3p, 2016 WL 1119029, at *2.

6 The ALJ found that Plaintiff's medically determinable impairments could
7 reasonably be expected to cause some of the alleged symptoms, but that Plaintiff's
8 statements concerning the intensity, persistence, and limiting effects of his
9 symptoms were not entirely consistent with the evidence. Tr. 19.

10 *1. Inconsistent Objective Medical Evidence*

11 The ALJ found Plaintiff's symptom claims are inconsistent with the
12 objective medical evidence. Tr. 20-21. An ALJ may not discredit a claimant's
13 symptom testimony and deny benefits solely because the degree of the symptoms
14 alleged is not supported by objective medical evidence. *Rollins v. Massanari*, 261
15 F.3d 853, 857 (9th Cir. 2001); *Bunnell v. Sullivan*, 947 F.2d 341, 346-47 (9th Cir.
16 1991); *Fair v. Bowen*, 885 F.2d 597, 601 (9th Cir. 1989); *Burch v. Barnhart*, 400
17 F.3d 676, 680 (9th Cir. 2005). However, the objective medical evidence is a
18 relevant factor, along with the medical source's information about the claimant's
19
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1 pain or other symptoms, in determining the severity of a claimant's symptoms and
2 their disabling effects. *Rollins*, 261 F.3d at 857; 20 C.F.R. § 404.1529(c)(2).

3 The ALJ found Plaintiff's symptom complaints are inconsistent with the
4 medical records, which contain many generally normal mental findings. Tr. 20. In
5 February 2016, Plaintiff was noted as having normal insight, judgment, mood,
6 affect, orientation, and memory. *Id.* (citing Tr. 387). In March 2017, Plaintiff was
7 cooperative, calm, and pleasant, with normal eye contact, speech, thoughts,
8 orientation, memory, insight, judgment, thoughts, and mood, though he had an
9 anxious affect. Tr. 20 (citing Tr. 359). In February 2018, Plaintiff had a normal
10 assessment. Tr. 20 (citing Tr. 609). The medical records contain numerous largely
11 normal mental status findings. *See, e.g.*, Tr. 369, 378, 380-81, 383. There are
12 some examinations containing abnormalities, including fair insight, poor recent
13 memory, and distractible attention/concentration, Tr. 583, and anxious mood,
14 abnormal thoughts, some memory impairments, and abnormal abstract thought, Tr.
15 355-56, however even during the examinations containing some abnormal
16 findings, Plaintiff's examinations were otherwise normal. Dr. Greer noted she
17 discussed working with Plaintiff, but Plaintiff wanted to wait to see if he would be
18 receiving disability benefits because working would interfere with his ability to
19 obtain benefits, Tr. 22, 606, and she suggested Plaintiff pursue services from
20 division of vocational rehabilitation to help Plaintiff find work, but Plaintiff

1 declined, Tr. 606, 610. Plaintiff reported he wants to work in the future but felt he
2 could not presently. Tr. 610.

3 Plaintiff argues the medical evidence is consistent with his claims, as the
4 records document Plaintiff reported feeling anxious, being unable to return to
5 work, and his reports that he had ongoing symptoms of panic attacks and
6 depression. ECF No. 18 at 13-14. Plaintiff's argument largely relies on his own
7 self-report of his symptoms; the cited records contain Plaintiff's report of his
8 symptoms to medical providers, rather than objective documentation of his
9 symptoms and limitations. *See* Tr. 269-70, 311-12. Plaintiff also argues the
10 statement of his fiancée is consistent with his symptom claims, however a lay
11 witness statement does not provide objective medical evidence to support his
12 claims. *See* ECF No. 18 at 14. Plaintiff further argues the ALJ inflated Dr.
13 Greer's notes, and the notes reflected only Dr. Greer's hope that Plaintiff could
14 work. *Id.* at 8. However, Dr. Greer's notes contained Plaintiff's own statements
15 that he was not pursuing work so he could pursue disability benefits, and Dr.
16 Greer's repeated suggestions that Plaintiff pursue assistance obtaining work
17 indicates a belief that Plaintiff is able to work. Tr. 606, 609-10.

18 While Plaintiff's symptoms naturally waxed and waned, the ALJ's finding
19 that the relatively benign objective findings were out of proportion with and did
20 not corroborate Plaintiff's report of severe mental limitations is reasonable. This

1 was a clear and convincing reason, along with the other reasons offered, to
2 discount Plaintiff's symptom reports.

3 2. *Improvement with Treatment*

4 The ALJ found Plaintiff's symptom claims are inconsistent with Plaintiff's
5 improvement with treatment. Tr. 20. The effectiveness of treatment is a relevant
6 factor in determining the severity of a claimant's symptoms. 20 C.F.R. §
7 404.1529(c)(3) (2011); *Warre v. Comm'r of Soc. Sec. Admin.*, 439 F.3d 1001, 1006
8 (9th Cir. 2006) (determining that conditions effectively controlled with medication
9 are not disabling for purposes of determining eligibility for benefits); *Tommasetti*
10 *v. Astrue*, 533 F.3d 1035, 1040 (9th Cir. 2008) (recognizing that a favorable
11 response to treatment can undermine a claimant's complaints of debilitating pain or
12 other severe limitations).

13 The ALJ noted Plaintiff's mental health symptoms improved with
14 medication, which was inconsistent with Plaintiff's reported limitations. Tr. 20. In
15 April 2017, Plaintiff reported having two good friends, riding motorcycles, fishing,
16 and camping. *Id.* (citing Tr. 584). In November 2017, Dr. Greer noted Plaintiff
17 appeared to be doing well, and his anxiety was under better control with new
18 medications, although he was still having occasional panic attacks. Tr. 20 (citing
19 Tr. 607). As discussed *supra*, despite some abnormalities in the records, Plaintiff
20 had numerous generally normal mental status examinations.

1 On this record, the ALJ reasonably concluded that Plaintiff's impairments
2 when treated were not as limiting as Plaintiff claimed. This finding is supported by
3 substantial evidence and was a clear and convincing reason to discount Plaintiff's
4 symptoms complaints.

5 *3. Activities of Daily Living*

6 The ALJ found Plaintiff's symptom claims are inconsistent with Plaintiff's
7 activities of daily living. Tr. 20-21. The ALJ may consider a claimant's activities
8 that undermine reported symptoms. *Rollins*, 261 F.3d at 857. If a claimant can
9 spend a substantial part of the day engaged in pursuits involving the performance
10 of exertional or non-exertional functions, the ALJ may find these activities
11 inconsistent with the reported disabling symptoms. *Fair*, 885 F.2d at 603; *Molina*,
12 674 F.3d at 1113. "While a claimant need not vegetate in a dark room in order to
13 be eligible for benefits, the ALJ may discount a claimant's symptom claims when
14 the claimant reports participation in everyday activities indicating capacities that
15 are transferable to a work setting" or when activities "contradict claims of a totally
16 debilitating impairment." *Molina*, 674 F.3d at 1112-13.

17 The ALJ noted Plaintiff's activities are inconsistent with his reported
18 difficulty leaving the house and frequent anxiety. Tr. 20-21. Plaintiff reported
19 camping, boating, fishing, and maintaining two friendships and a romantic
20 relationship. *Id.* Plaintiff's fiancée reported Plaintiff visits his friends and

1 stepfather, leaves the home almost daily, and is able to shop. Tr. 22-23. Plaintiff
2 argues there is not documentation of the frequency of his activities, ECF No. 18 at
3 9-10, but as discussed *supra*, Ms. Wright indicated the frequency of several of the
4 activities. Plaintiff argues he had anxiety during the activities, and his activities
5 are not inconsistent with his allegations. *Id.* However, there are multiple notes
6 documenting Plaintiff reporting engaging in camping, hunting, fishing, and
7 boating. Tr. 55, 515, 584, 599, 607. While Plaintiff argues the activities are not
8 transferrable to work activity, ECF No. 18 at 9, 11, the activities undermine
9 Plaintiff's allegations that he is often unable to leave his home.

10 On this record, the ALJ reasonably concluded that Plaintiff's activities of
11 daily living are inconsistent with his allegations. This finding is supported by
12 substantial evidence and was a clear and convincing reason to discount Plaintiff's
13 symptom complaints.

14 4. Substance Use

15 The ALJ found Plaintiff made inconsistent statements about his substance
16 use. Tr. 21. Inconsistent statements about drug use are appropriate grounds for the
17 ALJ to discount a claimant's reported symptoms. *Thomas*, 278 F.3d at 959;
18 *Edlund*, 253 F.3d at 1157; *Gray v. Comm'r, of Soc. Sec.*, 365 F. App'x 60, 63 (9th
19 Cir. 2010); *Lewis v. Astrue*, 238 F. App'x 300, 302 (9th Cir. 2007); *Morton v.*
20 *Astrue*, 232 F. App'x 718, 719 (9th Cir. 2007). At his hearing, Plaintiff testified he

1 had not been consuming any substances. Tr. 21, 43. Plaintiff stated he could not
2 recall the last time he consumed alcohol, but stated his attorney had told him the
3 medical records indicated his last use was October of 2017, and he did not have
4 any other recollection. Tr. 51. Plaintiff also testified he could not recall the last
5 time he used marijuana. *Id.* Plaintiff reported he first tried to stop drinking alcohol
6 in 2015, but he began drinking alcohol again multiple times per week before
7 stopping again and he had not drank since the last time he stopped. Tr. 52-53.
8 Plaintiff's records indicate continued alcohol consumption in November 2017 and
9 marijuana use in February 2017. Tr. 351, 467, 515.

10 Plaintiff contends the ALJ improperly speculated as to the significance of
11 Plaintiff's substance use on his ability to function. ECF No. 18 at 11-12. Plaintiff
12 argues the ALJ should not have considered Plaintiff's substance use, as he did not
13 find Plaintiff disabled. *Id.* When there is medical evidence of drug or alcohol
14 addiction (DAA), the ALJ must determine whether the drug or alcohol addiction is
15 a material factor contributing to the disability. 20 C.F.R. § 404.1535(a). In order
16 to determine whether drug or alcohol addiction is a material factor contributing to
17 the disability, the ALJ must evaluate which of the current physical and mental
18 limitations would remain if the claimant stopped using drugs or alcohol, then
19 determine whether any or all of the remaining limitations would be disabling. 20
20 C.F.R. § 404.1535(b)(2). If the remaining limitations would not be disabling, drug

1 or alcohol addiction is a contributing factor material to the determination of
2 disability. *Id.* If the remaining limitations would be disabling, the claimant is
3 disabled independent of the drug or alcohol addiction and the addiction is not a
4 contributing factor material to disability. *Id.* The claimant has the burden of
5 showing that drug and alcohol addiction is not a contributing factor material to
6 disability. *Parra v. Astrue*, 481 F.3d 742, 748 (9th Cir. 2008).

7 The ALJ found there was not clear evidence of substance abuse that allowed
8 for a materiality analysis. Tr. 21. The ALJ then stated that even during a period
9 sobriety, Plaintiff's substance use before and after the sober period could
10 reasonably have depressed Plaintiff's functioning. *Id.* Plaintiff argues the ALJ
11 erred in his analysis as his substance use is not material to his disability. ECF No.
12 18 at 12. However, the ALJ found there was not sufficient evidence to make a
13 materiality determination. Tr. 21. Any error in the ALJ's analysis of Plaintiff's
14 substance use is harmless, as the ALJ found Plaintiff's use was not material, and he
15 gave other clear and convincing reasons, supported by substantial evidence, to
16 reject Plaintiff's symptom claims. *See Molina*, 674 F.3d at 1115.

17 5. *Situational Stressors*

18 The ALJ found Plaintiff's exacerbation of his anxiety-related symptoms was
19 attributable to situational stress. Tr. 21. If a claimant suffers from limitations that
20 are transient and result from situational stressors, as opposed to resulting from a

1 medical impairment, an ALJ may properly consider this fact in discounting
2 Plaintiff's symptom claims. *See Chesler v. Colvin*, 649 F. App'x 631, 632 (9th
3 Cir. 2016) (symptom testimony properly rejected in part because "the record
4 support[ed] the ALJ's conclusion that [plaintiff's] mental health symptoms were
5 situational"); *but see Bryant v. Astrue*, No. C12-5040-RSM-JPD, 2012 WL
6 5293018, at *5–7 (W.D. Wash. Sept. 24, 2012) (concluding Plaintiff's stressors
7 appeared to have a constant presence affecting ability to work on a continuing
8 basis, rather than temporary exacerbation).

9 The ALJ noted some of Plaintiff's mental health symptoms were attributable
10 to situational stress. Tr. 21. Dr. Greer attributed Plaintiff's anxiety to an ongoing
11 legal proceeding, and noted Plaintiff was aware some of his stress would be
12 alleviated after the proceeding was complete. *Id.* (citing Tr. 614). The medical
13 records indicate in November 2016 Plaintiff was dealing with financial issues,
14 legal issues, housing issues, and issues with his sobriety, among other issues. Tr.
15 373. On this record, the ALJ reasonably concluded that Plaintiff's symptoms were
16 in part attributable to situational stressors. This finding is supported by substantial
17 evidence and was a clear and convincing reason to discount Plaintiff's symptom
18 complaints. Plaintiff is not entitled to remand on these grounds.

D. Step Five

Plaintiff contends the ALJ erred at step five. ECF No. 18 at 14-18. At step five of the sequential evaluation analysis, the burden shifts to the Commissioner to establish that 1) the claimant can perform other work, and 2) such work “exists in significant numbers in the national economy.” 20 C.F.R. § 404.1560(c)(2); *Beltran*, 700 F.3d at 389. In assessing whether there is work available, the ALJ must rely on complete hypotheticals posed to a vocational expert. *Nguyen*, 100 F.3d at 1467. The ALJ’s hypothetical must be based on medical assumptions supported by substantial evidence in the record that reflects all of the claimant’s limitations. *Osenbrook v. Apfel*, 240 F.3d 1157, 1165 (9th Cir. 2001). The hypothetical should be “accurate, detailed, and supported by the medical record.” *Tackett*, 180 F.3d at 1101.

The hypothetical that ultimately serves as the basis for the ALJ’s determination, i.e., the hypothetical that is predicated on the ALJ’s final RFC assessment, must account for all the limitations and restrictions of the claimant. *Bray*, 554 F.3d at 1228. As discussed above, the ALJ’s RFC need only include those limitations found credible and supported by substantial evidence. *Bayliss*, 427 F.3d at 1217 (“The hypothetical that the ALJ posed to the VE contained all of the limitations that the ALJ found credible and supported by substantial evidence in the record.”). “If an ALJ’s hypothetical does not reflect all of the claimant’s

1 limitations, then the expert's testimony has no evidentiary value to support a
2 finding that the claimant can perform jobs in the national economy." *Id.* However,
3 the ALJ "is free to accept or reject restrictions in a hypothetical question that are
4 not supported by substantial evidence." *Greger v. Barnhart*, 464 F.3d 968, 973
5 (9th Cir. 2006). Therefore, the ALJ is not bound to accept as true the restrictions
6 presented in a hypothetical question propounded by a claimant's counsel if they are
7 not supported by substantial evidence. *Magallanes v. Bowen*, 881 F.2d 747, 756-
8 57 (9th Cir. 1989); *Martinez v. Heckler*, 807 F.2d 771, 773 (9th Cir. 1986). A
9 claimant fails to establish that a step five determination is flawed by simply
10 restating argument that the ALJ improperly discounted certain evidence, when the
11 record demonstrates the evidence was properly rejected. *Stubbs-Danielson v.*
12 *Astrue*, 539 F.3d 1169, 1175-76 (9th Cir. 2006).

13 Plaintiff's argument is based entirely on the assumption that the ALJ erred in
14 considering the opinion evidence and Plaintiff's symptom claims. For the reasons
15 discussed throughout this decision, the ALJ's consideration of Plaintiff's symptom
16 claims and consideration of the medical opinion evidence are legally sufficient and
17 supported by substantial evidence. Thus, the ALJ did not err in assessing the RFC
18 or finding Plaintiff capable of performing work existing in the national economy.

1 **E. Step Three**

2 Plaintiff contends the ALJ erred at step three by finding that Plaintiff's
3 impairments did not meet Listing 12.06. ECF No. 18 at 18-19. At step three, the
4 ALJ must determine if a claimant's impairments meet or equal a listed impairment.
5 20 C.F.R. § 404.1520(a)(4)(iii). The Listing of Impairments "describes each of the
6 major body systems impairments [which are considered] severe enough to prevent
7 an individual from doing any gainful activity, regardless of his or her age,
8 education or work experience." 20 C.F.R. § 404.1525. "Listed impairments are
9 purposefully set at a high level of severity because 'the listings were designed to
10 operate as a presumption of disability that makes further inquiry unnecessary.' "
11 *Kennedy v. Colvin*, 758 F.3d 1172, 1176 (9th Cir. 2013) (citing *Sullivan v. Zebley*,
12 493 U.S. 521, 532 (1990)). "Listed impairments set such strict standards because
13 they automatically end the five-step inquiry, before residual functional capacity is
14 even considered." *Kennedy*, 758 F.3d at 1176. If a claimant meets the listed
15 criteria for disability, he will be found to be disabled. 20 C.F.R. §
16 404.1520(a)(4)(iii).

17 “To *meet* a listed impairment, a claimant must establish that he or she meets
18 each characteristic of a listed impairment relevant to his or her claim.” *Tackett*,
19 180 F.3d at 1099 (emphasis in original); 20 C.F.R. § 404.1525(d). “To *equal* a
20 listed impairment, a claimant must establish symptoms, signs and laboratory

1 findings ‘at least equal in severity and duration’ to the characteristics of a relevant
2 listed impairment” *Tackett*, 180 F.3d at 1099 (emphasis in original) (quoting
3 20 C.F.R. § 404.1526(a)). “If a claimant suffers from multiple impairments and
4 none of them individually meets or equals a listed impairment, the collective
5 symptoms, signs and laboratory findings of all of the claimant’s impairments will
6 be evaluated to determine whether they meet or equal the characteristics of any
7 relevant listed impairment.” *Tackett*, 180 F.3d at 1099. However, “ ‘[m]edical
8 equivalence must be based on medical findings,” and “[a] generalized assertion of
9 functional problems is not enough to establish disability at step three.’ ” *Id.* at
10 1100 (quoting 20 C.F.R. § 404.1526(a)).

11 The claimant bears the burden of establishing his impairment (or
12 combination of impairments) meets or equals the criteria of a listed impairments.
13 *Burch*, 400 F.3d at 683. “An adjudicator’s articulation of the reason(s) why the
14 individual is or is not disabled at a later step in the sequential evaluation process
15 will provide rationale that is sufficient for a subsequent reviewer or court to
16 determine the basis for the finding about medical equivalence at step 3.” Social
17 Security Ruling (SSR) 17-2P, 2017 WL 3928306, at *4 (effective March 27,
18 2017).

19 Here, the ALJ found that Plaintiff’s impairments and combinations of
20 impairments did not meet or equal any listings, including Listing 12.06. Tr. 18.

1 To meet Listing 12.06, the claimant must satisfy the criteria of both the Paragraph
2 A and Paragraph B criteria, or Paragraph A and C criteria of the listing. 20 C.F.R.
3 § 404, Appendix 1 to Subpt. P, Listing 12.06. The Paragraph A criteria requires
4 medical documentation of anxiety disorder characterized by three or more of the
5 following: restlessness, easy fatiguability, difficulty concentrating, irritability,
6 muscle tension, or sleep disturbance; panic disorder or agoraphobic characterized
7 one or more of the following: panic attacks followed by a persistent concern or
8 worry about additional panic attacks or other consequences, or disproportionate
9 fear or anxiety about at least two different situations; or obsessive-compulsive
10 disorder characterized by one or more of the following: involuntary, time-
11 consuming preoccupation with intrusive, unwanted thoughts, or repetitive
12 behaviors aimed at reducing anxiety. *Id.* The Paragraph B criteria is met if the
13 impairment results in an extreme limitation of one, or marked limitation of two, of
14 the following areas of mental functioning: understand, remember, or apply
15 information; interact with others; concentrate, persist or maintain pace; or adapt or
16 manage oneself. *Id.* The Paragraph C criteria requires the impairment is “serious
17 and persistent,” meaning there is a medically documented history of the existence
18 of the impairment over a period of at least two years, and there is evidence of both:
19 medical treatment, therapy, psychosocial support, or a highly structured setting that
20 is ongoing and diminishes the symptoms/signs of the mental impairment; and

1 marginal adjustment, meaning the claimant has minimal capacity to adapt to
2 changes in their environment or to demands that are not already part of their daily
3 life. *Id.*

4 Plaintiff contends he meets Listing 12.06 based on Dr. Cline's opinion, as
5 Dr. Cline opined Plaintiff has multiple marked limitations. ECF No. 18 at 18-19.
6 Plaintiff does not present an argument as to which Paragraph A criteria he meets,
7 nor which two Paragraph B criteria he meets, and Plaintiff does not address the
8 Paragraph C criteria. Plaintiff does not cite to any evidence to support his
9 argument except Dr. Cline's opinion. As the ALJ's rejection of Dr. Cline's
10 opinion was supported by substantial evidence, as discussed *supra*, and Plaintiff
11 has not presented any other argument or evidence beyond Dr. Cline's opinion,
12 Plaintiff has not met his burden in demonstrating he meets Listing 12.06. Plaintiff
13 is not entitled to remand on these grounds.

14 CONCLUSION

15 Having reviewed the record and the ALJ's findings, the Court concludes the
16 ALJ's decision is supported by substantial evidence and free of harmful legal error.
17 Accordingly, **IT IS HEREBY ORDERED:**

18 1. Plaintiff's Motion for Summary Judgment, **ECF No. 18**, is **DENIED**.

19 2. Defendant's Motion for Summary Judgment, **ECF No. 20**, is
20 **GRANTED**.

1 3. The Clerk's Office shall enter **JUDGMENT** in favor of Defendant.

2 The District Court Executive is directed to file this Order, provide copies to
3 counsel, and **CLOSE THE FILE**.

4 DATED April 14, 2021.

5 s/Mary K. Dimke
6 MARY K. DIMKE
7 UNITED STATES MAGISTRATE JUDGE
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